

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1540

Introduced by Assembly Member Bass

February 22, 2005

An act to ~~amend Section 211 of~~ *add Section 1473.7 to* the Penal Code, relating to ~~robbery~~ *criminal procedure*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1540, as amended, Bass. ~~Robbery—Criminal procedure: habeas corpus.~~

Existing law establishes the circumstances and procedures for prosecuting a writ of habeas corpus.

This bill would, in addition, authorize a district attorney to petition for a writ of habeas corpus to recall the sentence and commitment for an inmate committed to the Department of Corrections, if certain specified circumstances exist.

~~Existing law defines robbery as the felonious taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear.~~

~~This bill would make a technical, nonsubstantive change to that definition.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1473.7 is added to the Penal Code, to
2 read:

1 1473.7. (a) Notwithstanding any other law, the District
2 Attorney, consistent with the interests of justice and
3 considerations of public safety, may petition for a writ of habeas
4 corpus pursuant to this section to recall the sentence and
5 commitment of any inmate committed to the Department of
6 Corrections for any of the following:

7 (1) Under current law, the conduct giving rise to the judgment
8 under which the inmate was incarcerated would not result in the
9 judgment or in the sentence imposed.

10 (2) The judgment resulted from a miscarriage of justice or
11 there are circumstances so that confidence in the judgment is
12 undermined.

13 (3) The sentence was substantially more harsh than it would
14 be if the judgment was pronounced under current law.

15 (b) The remedy provided by this section shall not be used in
16 lieu of other remedies available to the inmate, nor in
17 circumvention of the proscription against successive writs. This
18 limitation shall not apply if there has been a change in the law
19 since the inmate invoked existing remedies or if the interests of
20 justice require. Nothing in this section shall be construed to
21 create any rights in persons incarcerated or to create a cause of
22 action for the benefit of any inmate.

23 (c) The superior court in which the inmate was sentenced may,
24 upon granting the writ of habeas corpus, vacate the judgment in
25 whole or in part, if justice so requires, or recall the sentence and
26 commitment previously ordered and resentence the inmate in the
27 same manner as if he or she had not previously been sentenced,
28 provided however, that the new sentence is not greater than the
29 initial sentence. Except as provided herein, nothing in this
30 section shall be construed as limiting the exercise of judicial
31 discretion at sentencing.

32 ~~SECTION 1. Section 211 of the Penal Code is amended to~~
33 ~~read:~~

34 ~~211. Robbery is the felonious taking of personal property in~~
35 ~~the possession of another, from his or her person or immediate~~
36 ~~presence, and against his or her will, accomplished by means of~~
37 ~~force or fear.~~